
Chapter 12
DISCIPLINE**Chapter Contents**

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Chapter 12 Discipline

Schools are encouraged to address student misconduct through appropriate school wide discipline policies, instructional services, and/or related services. If a student has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team shall consider the use of strategies, including positive behavioral supports and interventions, to address the behavior. If the IEP team determines that such services are needed, they be included in the IEP and be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Idaho Code 33-205. In addition to these rights, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play when the district is unable to work out an appropriate placement for the student with the parent and/or adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to “temporarily suspend” students for up to 20 school days, all students with disabilities who have been suspended or expelled for more than 10 cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

Section 1. General Discipline Guidelines

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may remove a student from his or her current placement to an appropriate interim alternative education setting (IAES) or another setting for not more than 10 consecutive days to the extent those alternatives are applied to students without disabilities.
2. District personnel may suspend any student, including a special education student, for up to 10 cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code:
 - a. A school principal has the authority to order a disciplinary suspension for up to 5 school days.
 - b. The superintendent can extend the disciplinary suspension for up to 5 additional school days.

3. A series of suspensions exceeding 10 days in a school year shall not constitute a pattern of removals resulting in a change of placement, without following the procedures discussed in this chapter.
4. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA 2004 rights—including the right to FAPE during periods of disciplinary suspension that extend beyond 10 cumulative school days in a school year if:
 - a. The district had knowledge that the student met the IDEA 2004 eligibility prior to the behavior that precipitated the disciplinary suspension; and
 - b. The parent and/or adult student asserts the right to FAPE.

Section 2. Actions Involving a Change of Placement

A change of placement is a removal from the student's current educational placement for more than 10 consecutive school days or a series of removals that constitute a pattern when they total more than 10 cumulative school days in a school year. Factors such as the student's behavior is substantially similar to behavior in previous incidents that resulted in series of removals, the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings. The District may consider any unique circumstances in determining whether to pursue a disciplinary change of placement.

Even if the disciplinary action is to suspend or expel a student, FAPE [educational services] cannot cease for more than 10 cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons which constitute a change of placement. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 of this chapter for more information.

A. District Actions Resulting in a Change of Placement

District administrators change a student's placement by:

1. Unilaterally removing a special education student from his or her current placement for:
 - a. More than 10 consecutive school days in a school year; or

- b. Subjecting a special education student to a series of removals that constitute a pattern:
 - (1) Because the series of removals total more than 10 school days in a school year;
 - (2) Because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
 - (3) Because of such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
- 2. District personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:
 - a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or
 - b. Knowingly possesses or uses illegal drugs *or* sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
 - c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA, defined as bodily injury that involves:
 - (1) A substantial risk of death;
 - (2) Extreme physical pain; or
 - (3) Protracted and obvious disfigurement; or protracted loss or impairment of the function of the bodily member, organ, or mental faculty.

B. Hearing Officer Actions Resulting in a Change of Placement

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

- 1. In requesting a hearing officer to place a student in an IAES, the district must:
 - a. Demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
 - b. Indicate whether the request is for an *initial* period of not more than 45 school days or an *additional* period of not more than 45 school days.

2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must:
 - a. Determine that the IAES proposed by district personnel in consultation with the student's special education teacher or the IEP team is appropriate.

C. Court Actions Resulting in a Change of Placement (Honig Injunction)

District administrators may seek a court order (Honig Injunction) to remove a special education student from school or the current placement at any time. FAPE [educational services] shall not cease during an injunction.

Section 3. FAPE Considerations

Services may not cease and the district shall always provide FAPE to the student with a disability:

1. After a student with a disability is removed for 10 school days in the same school year and subsequent days of removal do not constitute a change of placement;
2. There is a disciplinary change of placement.

A. District Actions When There is Not a Change in Placement Reference:

1. Notify the parent and/or adult student of the disciplinary action to be taken on the date of the decision;
2. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals;
3. Conduct as appropriate a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

B. District Actions When There is a Change of Placement

Whenever disciplinary action results in a change in placement, the district must:

1. Notify the parent and/or adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Procedural Safeguards Notice*;

2. The IEP team determines the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals;
3. Conduct a manifestation determination immediately, if possible, but not later than 10 school days after the date on which the decision to take the disciplinary action is made.

C. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team shall select an IAES that enables the student to:

1. Continue to participate in the general education curriculum;
2. Progress toward meeting the goals set out in his or her IEP; and
3. Receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

D. Transportation

If the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA 2004 shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to obtain access to the location where all other services will be delivered.
2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in a BIP

Section 4. Procedures for a Manifestation Determination

A manifestation determination by the parent and relevant IEP team members (as determined by the district and parents) involves a review of the relationship between the student's disability and the behavior subject to disciplinary action.

A. Actions Involving a Manifestation Determination

When a disciplinary action results in a change of placement, the district will take the following actions:

1. The parent and/or adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
2. A meeting will be held immediately, if possible, but no later than 10 school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the parent and/or adult student, and other relevant members of the IEP team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file including:
 - a. The student's IEP; and
 - b. Any teacher observations; and
 - c. Any relevant information provided by the parent and/or adult student.
3. Based on a review of the information, the IEP team, (relevant members determined by the parent and the district) will determine if the conduct in question was:
 - a. Caused by or had a direct and substantial relationship to the student's disability; or
 - b. The direct result of the district's failure to implement the IEP. [If so, the deficiencies must be immediately remedied.]

If the IEP team, (relevant members determined by the parent and the district), finds that either a or b above is true, the student's behavior will be determined to be a manifestation of his or her disability.

B. When Behavior Is a Manifestation of the Disability

If a student's behavior is determined to be a manifestation of his or her disability, the IEP team, (relevant members determined by the parent and the district), will:

1. Conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;
2. Review the BIP if one had previously been developed and modify it as necessary to address the behavior;

3. Return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

C. When Behavior Is Not a Manifestation of Disability

If the IEP team, (relevant members determined by the parent and the district), determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than 10 school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

Section 5. Other Considerations

A. Request for an Expedited Hearing

An expedited hearing is a hearing that occurs within 20 school days of the request with a decision rendered within 10 school days of the hearing.

1. The parent and/or adult student may request an expedited due process hearing if he or she:
 - a. Disagrees with the determination that the behavior was not a manifestation of the student's disability;
 - b. Disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or
 - c. Disagrees with the decision regarding the student's placement in an IAES.
2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.

3. When an appeal of a disciplinary action is requested (either by the parent to challenge the action or by the district to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first unless the parent and district agree otherwise.
4. Resolution meeting requirements apply but are shortened to 15 and 7 days. No challenge for sufficiency of request is available.
5. A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Sections 4 and 5, for an explanation of regular and expedited due process hearing rights and procedures.

B. Protections for Students Not Yet Eligible for Special Education

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA 2004 *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

1. Basis of knowledge

With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. The parent and/or adult student has expressed concern to supervisory or administrative district personnel or a teacher of the child that the student is in need of special education and related services. The concern must be expressed in writing unless the parent and/or adult student is unable to write or has a disability that prevents a written statement.
- b. The parent and/or adult student has requested that the student be evaluated for special education.
- c. The student's teacher or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.

2. No basis of knowledge

The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. An evaluation was conducted and a determination was made that the student did not have a disability.
- b. The parent and/or adult student did not give written consent for an evaluation.
- c. The parent and/or adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

C. Parent and/or adult student Request for Evaluation of a Disciplined Student

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

1. If the student is subsequently determined eligible for special education, the district will:
 - a. Convene an IEP team meeting to develop an IEP.
 - b. Conduct a manifestation determination.
 - (1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).
 - (2) If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than 10 school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

D. Referrals to and Action by Law Enforcement and Judicial Authorities

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA 2004 does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.
3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5.

E. Transfer of Discipline Records

Idaho Code 33-209 requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record shall include both the student's current IEP, including the FBA, BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized district personnel for their consideration in making the final determination regarding the disciplinary action.